

RECEIVED

Page 2

FEB 11 2022

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

United States District Court		District: <u>Sixth</u>
Name (under which you were convicted): <u>D'Anthony Curd</u>		Docket or Case No.: <u>FECR 104984</u>
Place of Confinement: <u>Iowa state penitentiary</u> <u>P.O. Box 316</u> <u>El. Madison, IA 52627</u>		Prisoner No.: <u>6478608</u>
Petitioner (include the name under which you were convicted) <u>D'Anthony Curd</u>		Respondent (authorized person having custody of petitioner) <u>v. Gov. Kim Reynolds</u> <u>State of Iowa</u>
The Attorney General of the State of: <u>Iowa: Thomas J. Miller</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Linn County Court House

51 third Ave. Bridge

P.O. Box 1768 Cedar Rapids, IA 52401-1768

(b) Criminal docket or case number (if you know): FECR 104984

2. (a) Date of the judgment of conviction (if you know): Dec 5th, 2014

(b) Date of sentencing: Dec 12th, 2014

3. Length of sentence: Count 1; 50yrs Count 2; 10yrs to be served consecutively

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

(Count 1) Murder in the second degree; 70% to be served
(Count 2) Robbery in the second degree; 70% to be served

6. (a) What was your plea? (Check one)

☐ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☒ (2) Guilty ☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Supreme Court of Iowa

(2) Docket or case number (if you know): 20-0094

(3) Result: Denied

(4) Date of result (if you know): March 16th, 2021

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

Ineffective assistance of Counsel, Illegal
Sentence

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

Iowa District Court in and for Linn County

(2) Docket or case number (if you know): _____

PLCV090126

(3) Date of filing (if you know): _____

April 23rd, 2018

(4) Nature of the proceeding: _____

Hearing via telephone

(5) Grounds raised: _____

1) The conviction or sentence was in violation of the
Constitution of the United States, The Constitution of the State
of Iowa, or the laws of this state. 2) The sentence
exceeds the maximum authorized by statute. 3) There exists
evidence of material facts, not previously presented and heard, that
require vacation of the conviction or sentence in the interests of justice.
and 4) the conviction or sentence is otherwise subject to collateral attack
upon ground(s) of alleged effort formerly available under any common law,
statutory, other writ, motion proceedings or remedy

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes

☐ No

(7) Result: _____

Denied

(8) Date of result (if you know): _____

Jan, 14th, 2020

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: Denied

(8) Date of result (if you know): September 4th, 2019

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☒ Yes ☐ No

(3) Third petition: ☒ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The conviction or sentence was in violation of the Constitution of the United States. The Constitution of the State of Iowa, or the laws of this state

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Curd's Sixth Amendment right to the effective assistance of counsel was violated where trial counsel failed to investigate Applicant's mental health history and present that history as evidence in mitigation at sentencing

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: mentally impaired

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief

Name and location of the court where the motion or petition was filed: Iowa District Court
in and for Linn County, 51 Third Ave Bridge, P.O. Box 1468 Cedar Rapids, IA

Docket or case number (if you know): PLCV-090126

Date of the court's decision: Jan 14th 2020

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme
~~Iowa District Court of Iowa~~
Hoover State Office Building Des Moines, IA

Docket or case number (if you know): 20-0094

Date of the court's decision: March 16th 2021

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:

The sentence exceeds the maximum authorized by Statute

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Sentences are ran consecutively not concurrently, Mental Health Needs to be heard in new sentencing

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: *Mentally Impaired*

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: *Post-Conviction Relief*

Name and location of the court where the motion or petition was filed: *Linn County Court House
51 Third Ave Bridge*

P.O. Box 1468 Cedar Rapids, IA 52401-1468

Docket or case number (if you know): *PLCV-090126*

Date of the court's decision: *Jan. 14th 2020*

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Iowa

Hoover State Office Building Des Moines, IA

Docket or case number (if you know): 20-0094

Date of the court's decision: March 16th 2021

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE:

There exists evidence of material facts, Not previously presented and heard, That require vacation of the conviction or sentence in the interests of justice.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

mental Health history from psych hospital's was not heard during trial.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: Mentally Impaired

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief

Name and location of the court where the motion or petition was filed: Town District Court

Fertinn County 51 Third Ave. Bridge P.O. Box 1468 Cedar Rapids, IA

Docket or case number (if you know): PCCV-09026

Date of the court's decision: Jan. 14th, 2020

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Iowa

Harver State Office Building Des Moines, IA

Docket or case number (if you know): 20-0894

Date of the court's decision: March 16th, 2021

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: *The conviction or sentence is otherwise subject to collateral attack upon ground(s) of alleged effort formerly available under any common law, statutory, other writ, motion proceedings or remedy*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*My extensive mental health history needs to be heard in a new trial
Public defenders did not use my mental health in trial*

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: *mentally impaired*

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: *post-conviction relief*

Name and location of the court where the motion or petition was filed: Linn County Court House
51 Third Ave Bridge P.O. Box 1468 Cedar Rapids, IA 52401
Docket or case number (if you know): PCV-Conviction Relief
Date of the court's decision: Jan. 14th, 2020
Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No
(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No
(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No
(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court of Iowa
Hoover State Office Building Des Moines, IA
Docket or case number (if you know): 20-0094
Date of the court's decision: March 16th, 2021
Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Doug Davis (Public Defender) 215 4th Ave S.E.

300 Iahner Building Cedar Rapids, IA 52401

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: N/A

(f) In any post-conviction proceeding: Nathaniel Niemam Attorney at law

329 18th St. Rock Island, IL 61201

(g) On appeal from any ruling against you in a post-conviction proceeding: Lanny Van Daele

Van Daele Law, LLC po. Box 635 215 Hwy 965 Suite 1
North Liberty, IA 52317

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Vacation of Sentence in it's
entirety or vacation of sentence and granted a new trial

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on Feb. 8th, 2022 (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

DAnthony Card #6478608
Iowa State Pen.
P.O. Box 316
Ft. Madison, IA
54602

NOTICE: This correspondence was
received in institution of the
Iowa Department of Corrections

U.S. District Court
131 East 4th Street
Suite 150
Davenport, IA
52601

